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The labour movement *in the struggle against racism and discrimination*

by June Veacock

The labour movement in Ontario has a history of organizing against racism and discrimination. Among some of the earlier activists were Sid Blum, Donna Hill, Kalman Kaplansky of the Jewish Labour Committee, and Harry Gairey and Stan Grizzle of the Brotherhood of Sleeping Car Porters.

The Jewish Labour Committee campaigned for fair employment and fair accommodation acts while Harry Gairey and Stan Grizzle were in the forefront of the struggle for the advancement of black railway porters.

By 1946 the Jewish Labour Committee had the broad support of the general labour movement, and labour committees for human rights were established in several provinces. Due, in large part, to the relentless efforts of these trade unionists, laws were in place to prohibit discrimination on the grounds of race, creed, colour, nationality, ancestry and place of origin by the end of 1960.

However, the labour movement, with other community groups, continued the pressure and lobbied persistently to strengthen and expand the laws, which resulted in a series of amendments.

Over the years the labour movement has attempted to build on this proud tradition. In 1980 the Ontario Federation of Labour Convention opposed the growing activities of the Ku Klux Klan and gave the federation a mandate to mount a broad campaign against racism across the province.

The federation's response to the mandate came in the form of the 'Racism Hurts Everyone' campaign, which used leaflets, posters and television advertising to increase the awareness if the problem among members and the public.

By the 1981 convention a major policy paper on racism had been adopted, further mandating the OFL to carry on its efforts to provide support for individuals and groups fighting racism.

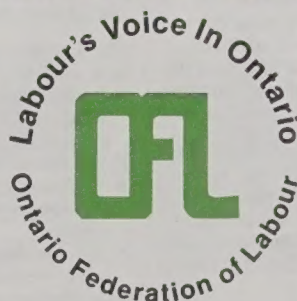
Throughout 1982, labour councils and other community groups held a series of workshops and seminars dealing with how racism and discrimination occur and how to assess and develop legislative and community-based solutions.

This province-wide effort led to the development of extensive materials to combat racism for use in the workplace. Among these were a

series of fact sheets produced in English, French, Italian, Portuguese, Spanish, Hindi and Cantonese. This was followed by the development of a week-end course involving the training of worker instructors who would be used in teaching local union activists the skills necessary to fight racism. (Labour Councils, individual affiliated unions and the Canadian Labour Congress taught this course at week-end institutes and schools around Ontario.)

In 1986 the federation renewed its efforts to combat racism and discrimination. Two aspects were a policy paper at the November convention and a series of meetings with local leadership across the province. The convention document on racism and discrimination called on labour councils and affiliates to:

- examine contracts, union constitutions and local union by-laws to seek out and eliminate hidden barriers to the participation of women, minorities and differently abled;
 - look at their own methods of hiring and ensure that systems are open to visible minority candidates;
 - establish active human rights
- continued on page 2*



Contents

Editorial	5
Chairman's corner	5
Affirmative action for school employees	4
CASHRA conference	4
Court Challenges Program	2
Editor resigns	5
First decision in harassment because of handicap	6
Happy ending	6
Joint venture with CUPE	5
New booklet on the Charter	5
Requirement of a valid driver's licence excludes handicapped from employment	6
Twenty-fifth anniversary poster	3
Women can't paint houses!	2

Role models for people with disabilities

by Janette Higgins



It has been demonstrated many times that we all need positive role models if we are to expand awareness of our own potential. This is as true for women and racial minorities as it is for people with disabilities. For this reason, the Handicapped Employment Program has published *Profile*, a one-issue 'magazine', which briefly tells the stories of people with disabilities who are successfully employed across the province.

Each person had barriers to overcome — some were attitudinal, some were physical and some were built right into the social and economic system. The stories illustrate how a positive outcome has been achieved in spite of these barriers. Whether it's a teacher with Grade 3 reading ability, a library worker who has been labelled mentally retarded, a barrier-free design consultant with low vision, the proprietor of an antique business who is deaf and has

continued on page 2

Role models for people continued from page 1

cerebral palsy, or a computer systems analyst who came back to work after a bout with schizophrenia, each has achieved his or her rightful place in the world of work.

Profile developed in response to a need identified by John Rae, a consultant in the Handicapped Employment Program. When John entered university his goal was to become a secondary school history teacher. As a blind person, he was counselled against pursuing this goal. Yet there were, then, several blind people teaching in the regular school system in Canada and several hundred in the U.S. If John's counsellors, or John himself, had been aware that it was possible for him to become a teacher, and if his potential employers saw similar possibilities, John might, today, be a history teacher. As he puts it, 'If I had known then what I know now I might be teaching history in a secondary school somewhere in Ontario.'

We hope that *Profile* will expand awareness of the employment potential that exists for people with disabilities, not only for themselves, but for their families, rehabilitation workers, teachers, trade unions and employers.

Profile is available from the:

Handicapped Employment Program
Ontario Ministry of Labour
Resource Centre
400 University Avenue
Toronto, Ontario
M7A 1T7

Janette Higgins is manager of the
Handicapped Employment Program.

The labour movement continued from page 1

- committees;
- negotiate non-discrimination clauses in collective agreements;
- include anti-racism education in stewards' training and all union educational programs;
- encourage constant vigilance by steward bodies to react to manifestations of racism and discrimination, including racist jokes;
- ask unions with large numbers of immigrant workers to consider the translation of collective agreements.'

Last fall officers and staff of the federation travelled across the province to build support for the program. They met with the local leaders of unions and labour councils and advised them to establish human rights committees to provide workplace support for victims of racism and discrimination.

As a result of these province-wide meetings, in the spring of 1987 a series of week-end seminars was organized by several labour councils. Also, a number of affiliates, such as the CAW, OPSEU and the USWA, have initiated programs to combat racism and discrimination.

The labour movements' efforts in the fight against racism are not limited to Ontario. To cite two examples, the British Columbia and Saskatchewan federations have developed programs for their affiliates.

The OFL and its members are committed to combating racism and discrimination throughout Ontario. Much work has been done, but much remains to be done.

June Veacock is the director of human rights/race relations, Ontario Federation of Labour.

Court Challenges Program

An important resource for groups and individuals seeking equality rights under the Charter is the Equality Rights Panel.

As yet, the importance and potential of this panel is not well known or understood.

Here's what the Equality Rights Panel is and what it can do.

The Equality Rights Panel is a seven-member, independent panel set up by the Canadian Council on Social Development in July 1986. Its role is to provide financial assistance to individuals or non-profit groups to enable them to bring before the courts important test cases under the Charter on equality rights. A second panel funds cases dealing with language rights under the Charter.

The panel has a \$9 million fund, provided by the federal government for Charter cases until 1989.

The Equality Rights Panel can help in a number of ways:

- by providing funding to cover legal costs for a Charter case (usually up to a maximum of \$35,000 at each court level)
- by funding research related to developing test cases under the Charter
- by providing seed money to cover research and related costs to develop a specific case up to a maximum of \$5,000.

The criteria that the committee follows are:

- the case deals with equality rights under the Charter
- the case is an important test case that will affect a significant number of people

- the case is one that comes under federal jurisdiction

Taking test cases

There is no magic required to take test cases under the Charter with the help of this program.

You don't have to be a lawyer or do anything complicated. The panel has funds to pay for a lawyer or for research to develop a case.

The important thing is to have a valid issue that relates to equality under section 15 of the Charter.

Section 15 of the Charter says: *Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.*

It should be noted that the list of grounds in section 15 is not all-inclusive. Discrimination on other grounds in addition to those listed can be challenged under the Charter with the help of this program, such as discrimination on the basis of sexual orientation or marital status, for example.

Groups and individuals who are concerned with an equality issue should contact the Equality Rights Panel to find out if it can assist them.

Write: Richard Goreham,
Co-ordinator, Equality Rights
Panel, CCSD, 55 Parkdale
Avenue, Ottawa, K1Y 4G1.
(613) 728-1865.

Women can't paint houses!

by Lisa Futerman

In a recent case before a board of inquiry, refusing to grant a job interview because of the sex of the applicant was found to breach sections 4 and 8 of the *Human Rights Code*.

Ingrid Anderson, the complainant, responded to an advertisement for a job as a painter at the Canadian Employment Centre. The only stated criteria for employment were 'some experience' in painting and a willingness to 'train on the job'. She was, however, refused an interview with the Taro Painting and Decorating Division although she had the requisite experience and willingness to train. Feeling that such a job wasn't 'traditional' for a woman, the respondent, Mario Bianchet would not interview Ms. Anderson, despite the fact that he had not even considered her qualifications for the job.

The respondent claimed that his refusal to consider Ms. Anderson for the job was not because of his personal sentiments with regard to hiring women, but rather because of the 'hostility' that would have erupted from the male employees had he done so.

He pointed out that there were a large number of workers on the project whose behaviour he could not control. He feared that he might be held responsible for their conduct, whether it be rough language in the presence of a woman or possible 'harassment' of a woman employee.

The Code provides, however, that an employer will not be held liable for the discriminatory conduct of employees (other than management and supervisory staff) unless it is found that he or she had prior knowledge of it and took no remedial action. The Code does prohibit the infringement of the rights of other employees by co-employees; section 4(1) states, 'every person has a right to equal treatment with respect to employment without discrimination because of...sex...' Further, section 8 asserts that 'no person should infringe or do, directly or indirectly, anything that infringes a right under this part.'

An employee could therefore enforce his or her rights directly against those who engaged in conduct that violated sections 4 and 8.

The employees who acted contrary to these provisions could have been dealt with separately.

Although the respondent was found to have a 'decent concern' for the well-being of the complainant, such was found to be 'offset' by the 'stereotyping' of a woman employee as being unable 'to fit in' and 'look after herself'.

The respondent also argued that he had not violated the Code, as section 23(b) was applicable in the circumstances. That section provides that 'sex' can be a 'bona fide' qualification because of the 'nature of the employment.' However, the board emphasized that this provision is only applicable to the type of employment where certain characteristics bear some relationship to the individual's ability to perform the job in question. This was not the case with regard to the circumstances before the board.

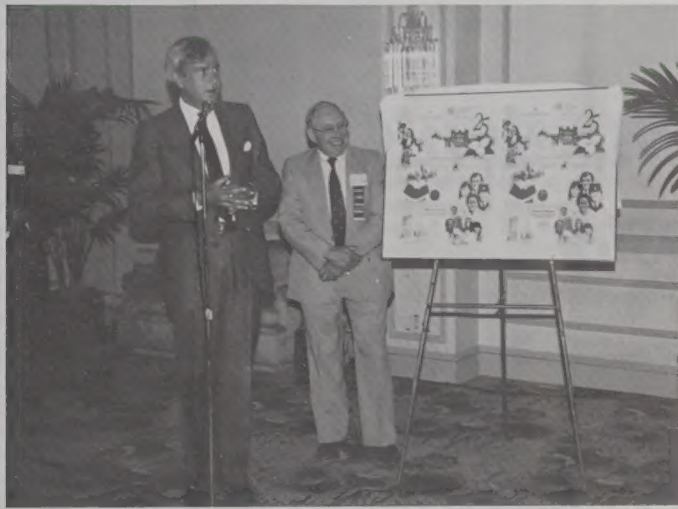
Although it was recognized that the situation in which the respondent found himself was a difficult one, the responsibility of an employer is to take measures to prevent discrimination in the workplace and not to engage per-

sonally in discrimination in order to preclude a problem arising in the future. The board emphasized this point by stating that 'reasons of the actual or feared conduct of other employees toward an employee or prospective employee cannot justify discrimination against that person.'

The board of inquiry acknowledged the consideration that the respondent showed toward the complainant, but noted the danger that his actions could have, and that systemic discrimination is often grounded in good intentions.

The board held that the complainant was entitled to compensation for the 'lost employment opportunity', and Taro Painting Division was ordered to pay \$862 for lost wages. This sum was calculated by considering not only the time during which she was unemployed but also the difference between wages she would have obtained during the course of the painting assignment and those that she collects at her current place of employment.

Lisa Futerman is a part-time student of political science at the University of Toronto.



The Hon. David Peterson, Premier of Ontario, addressed the delegates and was presented with a special commemorative 25th anniversary poster.

Premier David Peterson exchanges pleasantries with Canon Purcell and Gordon Fairweather.



Commissioner Catherine Frazee's seminar on Pre-employment, Medical and Mandatory Drug Testing proved to be one of the highlights of the conference. Commissioner Frazee is shown here with Canon Purcell.



CASHRA conference

The Ontario Human Rights Commission was host to the 15th Anniversary Conference of the Canadian Association of Statutory Human Rights Agencies, held in Toronto recently.

The 3½-day conference was attended by members from across the country, who discussed and exchanged information on procedural, legislative and educational developments and participated in state-of-the-art training seminars.



Head table guests for conference luncheon, from left to right: Dan McIntyre, Race Relations Commissioner, Ontario Human Rights Commission; Nicole Trudeau-Birard, Vice President, Quebec Human Rights Commission; Mme. Thérèse Sévigny, Under-Secretary-General for Public Information, United Nations; Canon Borden Purcell, Chairman, Ontario

Human Rights Commission; Ron Kruzeniski, Chairman, Saskatchewan Human Rights Commission; Lou Ronson, Vice Chairman, Ontario Human Rights Commission; Gordon Fairweather, Chief Commissioner, Canadian Human Rights Commission; Gillian Butler, Chairman, Newfoundland Human Rights Commission.



The Hon. William Wrye, Minister of Labour, chats with Canon Purcell, Commissioner Kishkon and guest, Dr. R. Wagenburg.

Affirmative action for school employees

Mrs. Davey, who was a cleaner with the respondent board of education at the time she filed her complaint, alleged that the school board discriminated against her in employment because of sex, in that cleaners, who were all female, were treated differently from caretakers, who were predominantly males. She alleged that, although the two positions involved similar duties, the caretakers were in a more favourable position regarding hours of work, seniority and receipt of responsibility pay. She also alleged that she and other cleaners were not given an equal opportunity to apply for the caretaker positions.

A board of inquiry had been appointed to decide the complaint, but the parties reached a mutually satisfactory settlement prior to the hearing.

The settlement between Mrs. Davey and the union provided as follows:

- the union paid Mrs. Davey \$1,000 and wrote her a letter, acknowledging the problems that had existed;
- Mrs. Davey was offered the next available position as head caretaker at either Eastview Public School, Bayview Public School or Ben R. McMullan Public School;

- the union and Local 16 agreed to implement an affirmative action program, which includes assistance to female cleaners who wish to prepare for the positions of custodian, assistant head caretaker or head caretaker in an elementary school; training for the positions of custodian or caretaker and promotional opportunities for these positions.

The following settlement was reached between Mrs. Davey and the respondent board of education:

- the board paid Mrs. Davey \$13,000 and wrote her a letter of apology;

- the board agreed to employ a person in the position of employment equity officer for a one-year period to deal appropriately with human rights issues as they may occur;
- Mrs. Davey received the next available position as head caretaker at one of the three aforementioned public schools;
- the board agreed to implement the affirmative action program referred to above.

The terms of settlement were implemented by consent order of the board of inquiry.

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Editorial

Workers' rights are human rights.

The rights of workers were gained after long battles and struggles in modern times. They are contained in various UN human rights treaties, ILO Conventions and recommendations and in provincial and federal labour codes.

For example, the Universal Declaration of Human Rights, adopted in 1948, which remains the standard for all nations, states, in article 23, that 'everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.'

Another major human rights instrument, the International Covenant on Economic, Social and Cultural Rights (which Canada ratified in 1976 with the consent of the provinces) declares that 'the States Parties to the present Covenant recognize the right to work, which includes the right of everyone to gain his/her living by work which s/he freely chooses or accepts, and will take appropriate steps to safeguard this right' (article 6).

The Covenant also recognizes the 'right of everyone to the enjoyment of just and favourable conditions of work...' (article 7).

Then, the treaty speaks of 'the right of everyone to form trade unions and join the trade union of his/her choice, subject only to the rules of the organization concerned, for the promotion and protection of his/her economic and social interests' (article 8).

Furthermore, Canada has ratified a number of ILO Conventions that deal with employment policy, discrimination in employment, equal remuneration for women workers, freedom of association and the right to organize.

Canada, with the consent of the provinces, has committed itself on the international stage not only to the principles included in the various treaties, but also to carry its obligations contained therein for the protection of workers' rights.

Domestically, the federal and provincial labour codes are meant to ensure the protection of workers and should always be in harmony with Canada's international undertakings.

With the advent of human rights commissions in the 'sixties, workers were even better protected from discrimination in employment on the basis of various grounds such as race, colour, religion, sex, etc...

The labour movement in Canada was in the forefront of the fight against discrimination and in the push for stronger anti-discrimination legislation. The feature article on 'The labour movement in the struggle against racism and discrimination' illustrates the work done by unions since the 'thirties.

Labour Day is an appropriate occasion to remember that workers rights are founded on fundamental human rights, and that their protection is of paramount importance in a free and democratic society.

Editor resigns

Philippe LeBlanc has resigned as editor of *Affirmation*. He has recently taken on the human rights and international affairs portfolio for the United Church of Canada.

New booklet on the Charter

A new booklet, *A Guide to the Charter*, was recently produced by the Court Challenges Program of the Canadian Council on Social Development.

It is aimed at equality-seeking groups and individuals. The booklet provides a non-technical guide to the Charter and information for application to the Equality Rights component of the Court Challenges Program.

Copies of the Guide are available at no cost to equality-seeking groups by contacting the Court Challenges Program, CCSD, 55 Parkdale Avenue, P. O. Box 3505, Station 'C', Ottawa, Ontario. K1Y 4G1.

Chairman's corner



Jon Merrihue

Several months ago our commission had the distinct pleasure of hosting the 15th Anniversary Conference of the Canadian Association of Statutory Human Rights Agencies. General feedback from the participants regarding the working sessions was consistently positive. The photo display elsewhere in this issue illustrates some of the highlights of the three-day meeting.

Among the resolutions passed by Canada's national human rights organization are those asking for the abolition of division by sex of amateur sports in Canada and stressing the importance of equal access for boys and girls to all amateur sports; declaring a national theme for the 1988 celebrations of International Human Rights Day and co-ordinating activities to foster national recognition of the significance of this anniversary; urging ministers of education to integrate the teaching of human rights and incorporate in-service teacher training into the school curriculum, consistent with the principles enunciated in, among other documents, the Universal Declaration of Human Rights; establishing a mechanism of consultation and operational exchanges related to Affirmative Action and Employment Equity programs; and issuing a Letter of Recognition to Rick Hansen, acknowledging and paying tribute to him as an outstanding Canadian

humanitarian for the cause of disabled persons.

This issue includes, as well, several articles that recognize the integral role played by unions in promoting the principles and operational precepts of human rights and that emphasize co-operative efforts undertaken by the commission and labour. The celebration of Labour Day has, for decades, provided Canadians with an opportunity to reflect upon and celebrate the activities and contributions of organized labour to our society.

The philosophical premise of this movement — that of advancing the inherent dignity and worth of the individual — corresponds to the commission's aims as reflected in our legislation. I have personally welcomed the opportunities, occasioned over the years, to co-sponsor and participate in joint ventures with labour designed to increase awareness of employer/employee rights and responsibilities. These have included such efforts as the powerful 'Racism Hurts Everyone' campaign, workshops on the provisions of the Code, addresses at district labour council meetings and the recent conference outlined elsewhere in this issue by Ms. Blake-Côté.

Cognizant of our commonalities, labour and the commission will, I trust, continue to work together to achieve our mutual goals.

I would also like to take this opportunity on behalf of my colleagues to bid farewell to Commissioner Leslie Blake-Côté, who has moved out of the province and has therefore resigned from her responsibilities with us.

An active member of the *Affirmation* editorial board, Leslie's enthusiasm for, and commitment to, human rights will be missed. We wish her every success in responding to new challenges and endeavours.

Joint venture with CUPE

by Leslie Blake-Côté

The commission has been involved with unions in sponsoring seminars and workshops. An example is the third annual CUPE conference on human rights.

On the weekend of February 13 and 14, the Canadian Union of Public Employees held its Third Annual Conference on Human Rights, jointly sponsored by the Ontario Human Rights Commission.

'I feel really good about the seminar,' said Terry O'Connor, secretary-treasurer of the Ontario Division of CUPE, and conference organizer. 'A lot of people didn't realize that the Human Rights Commission belongs to all of us and it's to our advantage to have it working for us.' He did add, however, that 'I don't feel the subject has been exhausted. There's still more to discuss. Next year, we hope to have another conference with the commission's Race Relations Division.'

The theme of this year's conference was 'The Human Rights Commission and How it Works'. Issues discussed included the recent amendments to the Code, racism in the workplace, problems faced by minority groups and difficulties encountered by women.

Canon Borden Purcell, commission chairman, spoke on the legislative changes to the Code and traced some of the history of discrimination in Canada. Commissioner Catherine Frazee discussed the problems of persons with disabilities. Other speakers included Jeff Rose, national president of CUPE, and Sean O'Flynn, secretary-treasurer of the Ontario Federation of Labour.

The two-day conference was attended by over 50 rank and file members.

Leslie Blake-Côté is a commissioner with the Ontario Human Rights Commission.

Requirement of a valid driver's licence excludes handicapped from employment

A recent settlement of a human rights complaint highlights the need for employers to review what have historically been viewed as 'neutral' job qualifications when these qualifications have the effect of precluding persons with a handicap from being hired or even considered for a position.

The complainant in this case has a B.A. in journalism, had completed his third year at law school and had had ten years of community and social services experience. He is also blind.

He had been referred to the job at issue by the Handicapped Employment Program (HEP) as he was well qualified for the position. However, when he stated on the telephone that he was blind, he was told by a representative of the employer that a driver's licence was required and that he need not apply for the job. The complainant offered his assurances that he travelled well with a guide dog, had travelled through Europe and had no difficulty travelling throughout Toronto on public transportation. The employer representative maintained, however, that a driver's licence was

necessary in order to reach appointments with clients, and that the job could not be performed without one. Although the complainant insisted on sending in his résumé to demonstrate his qualifications, he was not granted an interview. Applicants with less education and less experience were, however, interviewed for the position. In fact, two applicants that were interviewed had only a high school education and no related work experience. Consistent with the views of the employer, the successful candidates in the competition all had a valid driver's licence.

The complainant maintained that, with some accommodation, he would have been able to perform the duties of the job. He had previously held a similar position and, at the time the complaint was resolved, was successfully working in a position that required many of the same skills and experience as the position he was denied an interview for. He felt his transportation needs could be met through public transportation or taxis, as they were in his current job.

The employer initially argued that there had been no intention to

discriminate and that the refusal to employ the complainant was simply the result of a general requirement that all employees have a driver's licence. While neutral on its face, the requirement for a driver's licence would, however, as it did in this case, have the effect of excluding those persons who are handicapped by blindness from competing for the position.

The commission relied on the wording of the Code and the existing case law to help facilitate the settlement in this complaint.

Both clearly establish that the mere fact of a physical disability is not a sufficient ground for refusing to employ someone with a handicap. A handicapped person may not be disqualified from employment unless the handicap renders the person incapable of performing the essential duties of the job. Equally apparent from the case law is the requirement to provide an individual such as the complainant with an opportunity to prove his or her abilities. The right to an individual assessment has been upheld in case law even in circumstances where it has later been established that the complainant could not manage the essential requirements of the position. In the case of the complainant, it appeared that he was as qualified, if not more qualified, than the other applicants who were ultimately hired for the position.

that he treated Mr. Boehm. 'He was treated as inferior, as someone who did not deserve the same respect as the so-called normal employee.'

The board further stated that although Mr. Woods did not intend or realize the catastrophic impact of his vexatious comments and conduct upon the complainant, knowing and intending that such actions would hurt he must bear responsibility for all the consequences that ensued.

There was testimony to the effect that some of the incidents were legitimate forms of disciplinary actions by a supervisor. However, the board stated that there was no evidence to suggest that there was any justification for Mr. Woods's behaviour and found that the complainant's condition of mental impairment was at least a proximate cause of the intensity and quality of the respondent's behaviour and was the sole reason for many of the derisive comments made by Mr. Woods.

In addition to finding that Mr. Woods had contravened subsection 4(2) of the Code in his treatment of Mr. Boehm, the board found National in contravention of the Code on the organic theory of corporate responsibility. This theory states that a corporate employer is personally liable for the acts of an employee where that employee is part of the 'directing mind' of the corporate employer.

Having found discrimination contrary to the Code, the board ordered the respondents jointly and severally liable to pay to the complainant the sum of \$340 as damages for lost wages, \$3,000 as general damages for mental anguish and \$549 as interest.

In order to defend successfully against the complaint, the respondent employer would have had to show that the ability to drive was necessary in order to perform an essential duty of the position. As driving was not an essential element of the work to be performed, as it would be for the position of a taxi or truck driver, the respondent employee agreed to compensate the complainant for the treatment he had been subjected to.

As a result of the settlement, the employer agreed to pay the complainant \$17,778.31. That amount represents the sum of money the complainant would have received had he been employed by the respondent for a year less the income and benefits he received from other sources during this time. The employer also agreed to remove 'a valid driver's licence' as a basic requirement for employment with the company and replace it with the 'ability to provide own transportation' for all positions other than those that involve driving as an essential duty.

Happy ending

The complainant, a woman from Pakistan, found a fictional story full of racial slurs on her desk at work. She complained to her supervisor, who said it was a joke and advised the complainant not to take it seriously. Although an apology was forthcoming, the complainant alleges that the respondent did not take adequate measures to redress the problem. As a result, the complainant quit her job.

While the respondent generally agreed with the complainant's allegations, there was some dispute over whether the problem was appropriately dealt with. At the fact finding conference it was discovered that the supervisor, who xeroxed the slur, left it on the complainant's desk by mistake. Both the company and the supervisor apologized and asked the complainant to return to work. As well, the staff was immediately advised via memo that ethnic jokes were unacceptable in the workplace. The complainant, however, felt that she could not continue to work for the respondent because of the humiliation she had suffered.

The complainant received \$3,136.00 for lost wages and damages to dignity, and a letter of reference. In addition, the respondent agreed to submit a letter of assurance to the commission, a memo to staff regarding the circulation of harmful material and to hold a training session for their staff on the provisions of the Code.

The commission was further notified that the complainant, in the light of her satisfaction with the settlement, has donated the financial component of her settlement to a trust fund in Pakistan to subsidize disadvantaged children who could not otherwise afford an education.

First decision in harassment because of handicap.

The complainant, Mr. Boehm, alleged that a new supervisor, Mr. Woods, discriminated against him by harassment in the workplace because of handicap, and ultimately rendered it unreasonable for him to continue work under such conditions. Mr. Boehm has a condition of mental impairment. Mr. Boehm also asserted that the company is responsible at law for the breaches of Mr. Woods if he is found to have acted in violation of the Code.

This board of inquiry was the first in any jurisdiction to deal with the issue of harassment because of handicap.

The evidence indicated that, prior to Mr. Woods's arrival at the company, Mr. Boehm had worked for over a year at the bakery with no problems. According to all witnesses, Mr. Boehm was an eager, willing and very good employee.

The complainant testified that Mr. Woods would deliberately confuse Mr. Boehm in assigning work tasks, often yell at him and tell him he needed 'a kick in the ass'. On one occasion, a customer returned a pie because no sugar had been added to the filling, the result of an oversight on the part of Mr. Boehm. He testified that Mr. Woods called him a 'retard' and a 'dummy' and ordered him to eat the entire pie because it is the only way that 'people like these' will understand. This testimony was corroborated by co-workers and management employees.

Mr. Boehm's mother complained of this incident to the company's general manager.

Mr. Woods generally denied all of Mr. Boehm's allegations and testified that Mr. Boehm gave him Christmas gifts and never complained.

Mr. Boehm's mother described the events of a day on which Mr. Boehm had returned home from work ill and upset. He visited his doctor, who testified that Mr. Boehm was extremely upset and displayed fear and anxiety about his work. Mrs. Boehm further stated that, from the time Mr. Woods became her son's supervisor, Mr. Boehm would often come home upset, was often nervous and had begun to lose the self-confidence in his ability that had been painstakingly built up over time. It was in response to these pressures that Mr. Boehm subsequently quit his job.

Evidence introduced by the company indicated that the employer offered Mr. Boehm his job back. However, the board of inquiry stated, Mr. Boehm just could not face Mr. Woods again.

The board accepted Mr. Boehm's evidence of the harassment incidents and his family's testimony about their effects. Moreover, the complainant's testimony was generally corroborated by the testimony of other workers. In the view of the board chairman, Mr. Woods would not, and did not, treat non-handicapped employees in the harassing manner